

EXHIBIT 35

*WINDSOR SECURITIES, LLC VS.
ARENT FOX LLP, et al.*

*SANDRA STERN
June 25, 2018*



126 East 56th Street, Fifth Floor New York, New York 10022

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Min-U-Script® with Word Index

1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 -----X
WINDSOR SECURITIES, LLC,

4 Plaintiff,

5 -against-

6 ARENT FOX, LLP and JULIUS ROUSSEAU, III,
7 ESQUIRE,

8 Defendants.

9 Civil Action No.: 16-1533
-----X

10
11 90 Park Avenue
12 New York, New York

13 June 25, 2018
14 9:12 a.m.

15 VIDEOTAPED DEPOSITION of SANDRA STERN,
16 taken before Sadie L. Herbert, a Registered
17 Professional Reporter and Notary Public of the
18 States of New York and New Jersey.
19
20
21
22

23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
REF: 117661A

1 A P P E A R A N C E S:

2

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21 ALSO PRESENT:

22 STEVEN PRUSKY, Windsor Securities

23 HUNTER CARTER, Arent Fox

24 DANIEL SALEMI, Videographer

25

1 ----- I N D E X -----

2 WITNESS EXAMINATION BY PAGE

3 SANDRA STERN MR. WANG 7

4

5

6 ----- DIRECTION NOT TO ANSWER -----

7 PAGE 44 What question was that?

8 74 Did you ever hear from anyone that

9 the plaintiffs in the arbitration,

10 that is, Mr. Wood's clients, had

11 argued that California's -- that

12 9620 did not apply?

13 75 Did you ever hear that -- that there

14 was a dispute about whether or

15 not 9620 applied to the Acker and

16 Collins transactions?

17 76 So that -- when you -- so my saying

18 that to you is the first time

19 you've heard -- you've heard

20 that that was raised in

21 documents?

22

23

24

25

1 ----- DIRECTION NOT TO ANSWER (Cont'd) -----

2 PAGE 83 So what do you understand from
3 reading his report, you can put
4 aside whatever Mr. Frank or
5 Ms. Millrood said to you, what
6 do you understand from reading
7 his report Mr. Wood's area of
8 expertise is?

9 177 And then were they sent back to you
10 with some suggestions or edits?

11 177 Is the -- is -- is the documents
12 that we were given the -- the first
13 draft of what you prepared?

14 177 How many drafts were there?

15 178 Do you still have copies of -- of
16 whatever drafts you -- you
17 prepared?

18

19

20 ----- E X H I B I T S -----

21 STERN	DESCRIPTION	FOR I.D.
22 Exhibit 1	Expert Report of Sandra	
23	Stern, Esquire	30
24 Exhibit 2	Rebuttal Expert Report of	
25	Sandra Stern, Esquire	30

1	----- E X H I B I T S (Cont'd) -----		
2	STERN	DESCRIPTION	FOR I.D.
3	Exhibit 3	Reply Report of Sandra	
4		Stern in Response to the	
5		Rebuttal Report of Edwin	
6		E. Smith	30
7	Exhibit 4	Order	52
8	Exhibit 5	Order	52
9	Exhibit 6	Confidential Submission by	
10		Windsor Securities, LLC,	
11		5/21/15	72
12	Exhibit 7	Expert Witness Statement	
13		of Joseph Wood	135
14	Exhibit 8	Rebuttal of Joseph Wood	
15		to Expert Witness	
16		Statements Submitted by	
17		Defendants	135
18	Exhibit 9	Reply of Joseph Wood to	
19		Rebuttal Expert Report of	
20		James W. Maxson	135

(EXHIBITS TO BE PRODUCED)

1 STERN

2 A May I ask you whether Acker and Collins
3 were then still living?

4 Q Would it make a difference?

5 A Yes, it would.

6 Q Tell me why.

7 A Because if they had died at that point,
8 it seemed to me that the rights, with respect to
9 the policies, insuring their lives had ripened.

10 Q Okay. So -- so let me ask you the
11 question this way, Ms. Stern, had you -- had --
12 had your advice been sought following the Bitter
13 arbitration award, what would you have told
14 Windsor to do vis-à-vis Acker and Collins?

15 MR. FRANK: Objection.

16 You can answer.

17 Q Assuming that they were still alive?

18 MR. FRANK: Objection.

19 You can answer.

20 A Assuming they were still alive, the
21 only practical solution at that point would be
22 to hold a commercially reasonable sale, at
23 which -- at which point, it is likely that
24 nobody would have shown up except for Windsor,
25 not certain, but it's quite possible that nobody

1 STERN

2 would have shown up at the sale except for
3 Windsor and that Windsor would be credit bidding
4 in the -- for the amount of the debt and would
5 there -- thereafter, as provided by the code,
6 come to have complete and unfettered ownership
7 of the policies.

8 Q So let me ask you the question a
9 slightly different way, Ms. Stern.

10 Is it your opinion that there -- again,
11 assuming that Acker and Collins were alive, that
12 there were remedial actions that could have been
13 taken with respect to Acker and Collins to
14 ameliorate the impact of the Bitter decision?

15 A Yes.

16 Q Okay.

17 A And that would be, as I mentioned a
18 moment ago, to hold a commercially reasonable
19 sale.

20 Q Yes.

21 And so there were things that could
22 have been done, again, assuming that they were
23 still alive for at least a portion of or some
24 part of the time, there were things that could
25 have been done to ameliorate that impact on

1 STERN

2 Acker and Collins?

3 MR. FRANK: Objection, asked and
4 answered.

5 Q Right?

6 A Yes, as I mentioned a moment ago.

7 Q And are you aware that Mr. Prusky and
8 Windsor engaged other attorneys very shortly
9 after the issuance of the Bitter award?

10 MR. FRANK: Objection to your
11 predicate.

12 You can answer.

13 MR. WANG: Right, I think the
14 objection is to the "are you aware"
15 part; am I right?

16 MR. FRANK: Yeah, that's right, to
17 form.

18 Q So I'll take out the "are you aware."
19 Did -- did -- did -- did your review of
20 materials reflect that Windsor had hired
21 different lawyers or other lawyers shortly after
22 the Bitter award was issued?

23 A I don't recall whether that was evident
24 from the materials I reviewed.

25 Q Okay. If you assume that other -- as a

1 STERN

2 hypothetical that other lawyers were hired, do
3 you have some explanation as to why they didn't
4 give the advice that you think should have been
5 given to ameliorate the impact of the Bitter
6 award?

7 MR. FRANK: Objection.

8 You can answer.

9 A Since I know nothing about the
10 attorneys who did come to represent Windsor, I
11 don't know how I could answer that.

12 Q Do you know when it was that
13 Mr. Rousseau and Arent Fox were replaced?

14 A Sometime between the arbitration award
15 and I would say September, Oct- -- or October,
16 in the event, the fall of -- the fall of 2014.

17 Q Because by that time, they were back in
18 front of Mr. -- Judge Orrick with other lawyers,
19 is that why you're saying that -- well,
20 withdrawn.

21 What leads you to -- to say that, that
22 is, that it was sometime before the August,
23 September -- or September, October?

24 A Am I supposed to testify as to any
25 communications with counsel?

1 STERN

2 MR. FRANK: No.

3 A Then that's it.

4 Q Okay. Have you spoken to any of the
5 subsequent lawyers, that is, either Ms. Antonino
6 or Mr. Judd?

7 A No, I have not.

8 Q Did you review Ms. Canoff's expert
9 opinion that was tendered in the Acker, Collins
10 matter?

11 A I don't believe that I did.

12 Q Were you aware that -- that Windsor had
13 put forth an expert opinion in the Acker and
14 Collins matter to Judge Orrick?

15 A No, I was not aware of it until this
16 moment.

17 Q You didn't see -- didn't you see
18 reference to it in -- in Judge Orrick's
19 decision?

20 A I don't recall such reference.

21 Q Okay. So however many hours you've
22 spent reviewing the materials and reviewing
23 Judge Orrick's decision, you have no
24 recollection of -- of him making reference to
25 expert opinions?

1 STERN

2 during the 2001 revision of Article 9?

3 A What page are you on?

4 Q Well, looking, for example, at Page 12,
5 I think -- I think you made -- there was another
6 reference, yes, also on Page 13, about
7 discussions during drafting committee meetings
8 leading to the 2001 revisions of -- of
9 Article 9.

10 Do you remember referring to that?

11 A I do.

12 Q Okay. You -- you don't take
13 Mr. Rousseau to task for not being familiar with
14 what was discussed at drafting committee
15 meetings in 2001, do you?

16 A Most certainly not.

17 Q Okay. Take a look at the bottom of
18 Page 14 of your initial report, and it begins by
19 saying, "Julius Rousseau and Arent Fox never
20 advised Windsor to conduct a public sale or
21 describe the requirements for such a sale."

22 Do you see that?

23 A Yes, I do.

24 Q Now, you -- you did see emails that
25 made reference to hiring a Georgia lawyer to --

1 STERN

2 to look into a -- a sale of -- of the
3 collateral? Did you see that?

4 A Are you referring to David Fox's
5 emails?

6 Q I'm referring to emails generally,
7 whether it was David Fox's email, Mr. Rousseau's
8 emails to -- to Windsor, you saw reference to
9 that -- to that, didn't you, that is, that there
10 was consideration given to hiring a Georgia
11 lawyer to effect a sale in Georgia?

12 MR. FRANK: Objection as to form.

13 You can answer.

14 A My only memory is of that interchange
15 with respect to the Garcia transaction, in which
16 case, yes, there were emails drafted by David
17 Fox.

18 Q So you don't recall anything about that
19 circumstance, that is, contacting a Georgia
20 lawyer, other than for Garcia?

21 A I do not recall that.

22 Q Okay. Let's turn to Page 18 for a
23 moment, which is your -- part of your discussion
24 about the default sale right.

25 Is it possible to agree in advance in

1 STERN

2 Q Do you still have copies of -- of
3 whatever drafts you -- you prepared?

4 MR. FRANK: Same instruction,
5 please.

6 MR. WANG: Oh, okay, yes.

7 Q Acker, and I'm talking about Acker now,
8 I'm not talking about any case other than the
9 Acker case.

10 Did you see any releases in the Acker
11 case that the -- the trust in Acker, the -- had
12 actually given releases to Windsor?

13 A No, I didn't.

14 Q You didn't.

15 Would that make a difference to you if
16 they actually signed a release?

17 MR. FRANK: Objection.

18 Can you be time-specific, please.

19 MR. WANG: At any time.

20 MR. FRANK: Objection.

21 You can answer.

22 A No, it wouldn't.

23 Q It -- it wouldn't make a difference?

24 A It wouldn't, because if you have a COO
25 that was transferred at one point and then years

1 STERN

2 later, you have a release of a -- and I presume
3 what you were saying is a release of all
4 liabilities and obligations.

5 Q Yeah, a release by -- a release signed
6 by Windsor releasing Acker of the Acker trust of
7 all obligations.

8 A So under that assumption, you have many
9 years later a release, that does not tell me
10 that at the time the COO was executed, it was in
11 exchange for a release of all liabilities and
12 obligations. The dates here are very important.

13 Q And so when would -- when would the
14 release have to be of some -- when would the
15 release have to be dated in order for it to have
16 some significance to you, say, if it's many
17 years later, no good?

18 MR. FRANK: Objection.

19 Q Many years after what?

20 THE WITNESS: May I answer?

21 MR. FRANK: You can.

22 A Simultaneous with the execution of the
23 COO and as a bargain for exchange, that release,
24 it seems to me, would have been highly
25 significant.

1 STERN

2 Q Okay. But earlier, you said if it was
3 many years after, that's not good. Would it
4 have to be simultaneous with the COO or could it
5 be reasonably soon thereafter?

6 A I would say simultaneous. And as I
7 mentioned a moment ago, as a bargain for
8 exchange.

9 Q Okay. Let me show you a document. I
10 just want to show you a document and see whether
11 or not you've seen it before -- you know what,
12 no. I -- I promised you that I'd finish by
13 1 o'clock, it's now about five to 1:00, and I
14 think absent any other discussions, we'll --
15 I'll conclude now, Ms. Stern.

16 THE WITNESS: Okay.

17 MR. WANG: Thank you.

18 MR. FRANK: Are we done?

19 MR. WANG: Yes.

20 THE VIDEOGRAPHER: This concludes
21 today's deposition of Ms. Sandra Stern.
22 We are now off the record at
23 12:52 p.m., June 25th, 2018.

24 (Time noted: 12:52 p.m.)

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A C K N O W L E D G M E N T

STATE OF)
:
COUNTY OF)

I, SANDRA STERN, hereby certify that
I have read the transcript of my testimony taken
under oath in my deposition of June 25, 2018;
that the transcript is a true, complete and
correct record of my testimony, and that the
answers on the record as given by me are true
and correct.

SANDRA STERN

Signed and subscribed to before me
this _____ day of _____, ____.

Notary Public

C E R T I F I C A T E

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, SADIE L. HERBERT, a Registered
Professional Reporter and Notary Public, do
hereby certify:

That SANDRA STERN the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of July 2018.

A handwritten signature in cursive script that reads "Sadie Herbert". The signature is written in dark ink and is positioned above a horizontal line.

SADIE HERBERT, RPR, CLR

NAME OF CASE: WINDSOR SECURITIES VS. ARENT FOX
DATE OF DEPOSITION: June 25, 2018
NAME OF WITNESS: SANDRA STERN

PAGE	LINE	FROM	TO	REASON
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[illegible]

Subscribed and sworn before me

this_____day of _____, _____.

(Notary Public)

My Commission Expires:

181

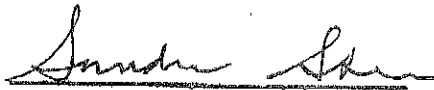
ACKNOWLEDGMENT

STATE OF *New York*,

: ss

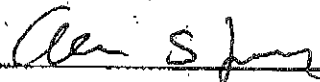
COUNTY OF *New York*

I, SANDRA STERN, hereby certify that
 I have read the transcript of my testimony taken
 under oath in my deposition of June 25, 2018;
 that the transcript is a true, complete and
 correct record of my testimony, and that the
 answers on the record as given by me are true
 and correct.



SANDRA STERN

Signed and subscribed to before me
 this 27th day of July, 2018.



Notary Public Registration No.

02J06327873

My commission Expires

7/20/2019

183

ERRATA

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NAME OF CASE: WINDSOR SECURITIES VS. ARENT FOX
 DATE OF DEPOSITION: June 25, 2018
 NAME OF WITNESS: SANDRA STERN

PAGE	LINE	FROM	TO	REASON
24	6	consumer capital	consumer	error in transcription
24	20	defense	defendants	error in transcription
38	14	they're	if you're	error in transcription
58	21	file	follow	error in transcription
61	15	can	---	error in transcription
123	13	time	types	error in transcription
124	9	anything into	any change to	error in transcription
130	16	the	any	error in transcription
153	20	a day	day-day	error in transcription
153	23	couple	couple of	error in transcription
166	14	would	would	error in transcription
179	23	bargain	bargained	error in transcription
180	7	bargain	bargained	error in transcription

Sandra Stern

Subscribed and sworn before me

this 27 day of July, 2018.

[Signature]

No. 02506327 F23

(Notary Public)

My Commission Expires:

7/20/2019